

By the Committee on Criminal Justice; and Senator Crist

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1 A bill to be entitled

2 An act relating to capital collateral representation;
3 amending s. 27.7001, F.S.; establishing that the
4 collateral representation system is a legislative branch
5 entity; providing a legislative finding that not all
6 capital cases are extraordinary or unusual; amending s.
7 27.701, F.S.; extending the term of years regional counsel
8 are appointed to serve; providing a deadline on the
9 appointment process; deleting the 2-year prohibition
10 against former regional counsel running for state office
11 or accepting another state appointment; requiring that
12 regional counsel be appointed by and serve at the pleasure
13 of the Commission on Capital Cases; removing provisions
14 establishing a pilot program in the northern region of the
15 state; amending s. 27.702, F.S.; clarifying the
16 administrative roles and functions of the Justice
17 Administrative Commission, the Commission on Capital
18 Cases, and the Capital Collateral Regional Counsel;
19 amending s. 27.709, F.S.; increasing and revising the
20 membership of the Commission on Capital Cases; relocating
21 the commission from the Office of Legislative Services to
22 the Justice Administrative Commission for purposes of
23 administration; authorizing the commission to sponsor
24 programs of continuing legal education on capital cases;
25 authorizing the commission to issue subpoenas and hold
26 hearings it considers appropriate for the administration
27 of justice in capital cases; authorizing the commission to
28 terminate the appointment of a capital collateral regional
29 counsel before the end of the counsel's term; amending s.

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30 27.710, F.S.; revising the criteria required for an
31 attorney to be eligible to be placed on the registry of
32 attorneys qualified to represent defendants in
33 postconviction capital collateral proceedings; providing
34 certain limited exceptions; requiring attorneys to sign a
35 contract with the Chief Financial Officer in order to
36 receive funds from the state; requiring each private
37 attorney appointed by a court to represent a capital
38 defendant to submit a report each quarter to the
39 commission; providing for removal and reinstatement to the
40 registry of attorneys; amending s. 27.711, F.S.; providing
41 for terms and conditions for appointment of counsel in
42 postconviction capital collateral proceedings; providing
43 for pro bono attorneys to receive reimbursement for
44 certain specified expenses; limiting representation by a
45 court-appointed attorney to seven defendants; prohibiting
46 an attorney from entering into an employment contract with
47 the offices of the Capital Collateral Regional Counsel if
48 he or she represents seven or more defendants in capital
49 collateral litigation; requiring a trial court judge who
50 proposes to award attorney's fees in excess of those set
51 forth in law to make written findings of fact that state
52 the extraordinary nature of the expenditures of time,
53 energy, and talents of the attorney in the case which are
54 not ordinarily expended in other capital collateral cases
55 and how the case is unusual; reenacting s. 27.7002, F.S.,
56 relating to the limitation of cases on collateral
57 representation, to incorporate the amendments made to ss.
58 27.710 and 27.711, F.S., in references thereto; providing

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59 an effective date.

60
61 Be It Enacted by the Legislature of the State of Florida:

62
63 Section 1. Section 27.7001, Florida Statutes, is amended to
64 read:

65 27.7001 Legislative intent and findings.--It is the intent
66 of the Legislature to create a legislative branch entity, as set
67 forth in part IV of this chapter, consisting of ss. 27.7001-
68 27.711, inclusive, to provide for the collateral representation
69 of any person convicted and sentenced to death in this state, so
70 that collateral legal proceedings to challenge any Florida
71 capital conviction and sentence may be commenced in a timely
72 manner and so as to assure the people of this state that the
73 judgments of its courts may be regarded with the finality to
74 which they are entitled in the interests of justice. It is the
75 further intent of the Legislature that collateral representation
76 shall not include representation during retrials, resentencings,
77 proceedings commenced under chapter 940, or civil litigation. The
78 Legislature further finds that not all capital collateral cases
79 are extraordinary or unusual.

80 Section 2. Section 27.701, Florida Statutes, is amended to
81 read:

82 27.701 Capital collateral regional counsel.--

83 ~~(1)~~ There are created three regional offices of capital
84 collateral counsel, which shall be located in a northern, middle,
85 and southern region of the state. The northern region shall
86 consist of the First, Second, Third, Fourth, Eighth, and
87 Fourteenth Judicial Circuits; the middle region shall consist of

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88 | the Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth, Thirteenth, and
89 | Eighteenth Judicial Circuits; and the southern region shall
90 | consist of the Eleventh, Fifteenth, Sixteenth, Seventeenth,
91 | Nineteenth, and Twentieth Judicial Circuits. Each regional office
92 | shall be administered by a regional counsel. A regional counsel
93 | must be, and must have been for the preceding 5 years, a member
94 | in good standing of The Florida Bar or a similar organization in
95 | another state. Each capital collateral regional counsel shall be
96 | appointed by the Commission on Capital Cases ~~Governor~~, and is
97 | subject to confirmation by the Senate. The Supreme Court Judicial
98 | Nominating Commission shall recommend to the Commission on
99 | Capital Cases ~~Governor~~ three qualified candidates for each
100 | appointment as regional counsel. The commission ~~Governor~~ shall
101 | appoint a regional counsel for each region from among the
102 | recommendations, or, if it is in the best interest of the fair
103 | administration of justice in capital cases, the commission
104 | ~~Governor~~ may reject the nominations and request submission of
105 | three new nominees by the Supreme Court Judicial Nominating
106 | Commission. Each capital collateral regional counsel shall be
107 | appointed to a term of 4 ~~3~~ years. Vacancies in the office of
108 | capital collateral regional counsel shall be filled in the same
109 | manner as appointments. The appointment process shall be
110 | completed within 120 days, notwithstanding confirmation. Each
111 | capital collateral counsel shall report to and serve at the
112 | pleasure of the Commission on Capital Cases. ~~A person appointed~~
113 | ~~as a regional counsel may not run for or accept appointment to~~
114 | ~~any state office for 2 years following vacation of office.~~

115 | ~~(2) Notwithstanding the provisions of subsection (1), the~~
116 | ~~responsibilities of the regional office of capital collateral~~

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117 ~~counsel for the northern region of the state shall be met through~~
118 ~~a pilot program using only attorneys from the registry of~~
119 ~~attorneys maintained pursuant to s. 27.710. Each attorney~~
120 ~~participating in the pilot must be qualified to provide~~
121 ~~representation in federal court. The Auditor General shall~~
122 ~~schedule a performance review of the pilot program to determine~~
123 ~~the effectiveness and efficiency of using attorneys from the~~
124 ~~registry compared to the capital collateral regional counsel. The~~
125 ~~review, at a minimum, shall include comparisons of the timeliness~~
126 ~~and costs of the pilot and the counsel and shall be submitted to~~
127 ~~the President of the Senate and the Speaker of the House of~~
128 ~~Representatives by January 30, 2007. The Legislature may~~
129 ~~determine whether to convert the pilot program to a permanent~~
130 ~~program after receipt of the Auditor General's review.~~

131 Section 3. Section 27.702, Florida Statutes, is amended to
132 read:

133 27.702 Duties of the capital collateral regional counsel;
134 reports.--

135 (1) The capital collateral regional counsel shall represent
136 each person convicted and sentenced to death in this state for
137 the sole purpose of instituting and prosecuting collateral
138 actions challenging the legality of the judgment and sentence
139 imposed against such person in the state courts, federal courts
140 in this state, the United States Court of Appeals for the
141 Eleventh Circuit, and the United States Supreme Court. The
142 capital collateral regional counsel and the attorneys appointed
143 pursuant to s. 27.710 shall file only those postconviction or
144 collateral actions authorized by statute. The three capital
145 collateral regional counsel's offices shall function

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146 independently and be separate budget entities, and the regional
147 counsel shall be the office heads for all purposes. The capital
148 collateral regional counsel shall be housed, for administrative
149 purposes, within the Justice Administrative Commission. The
150 Justice Administrative Commission shall provide administrative
151 support and service to the three offices to the extent requested
152 by the regional counsel. The three regional offices shall not be
153 subject to control, supervision, or direction by the Justice
154 Administrative Commission in any manner, including, but not
155 limited to, personnel, purchasing, transactions involving real or
156 personal property, and budgetary matters.

157 (2) The capital collateral regional counsel shall represent
158 persons convicted and sentenced to death within the region in
159 collateral postconviction proceedings, unless a court appoints or
160 permits other counsel to appear as counsel of record pursuant to
161 ss. 27.710 and 27.711.

162 (3) (a) The capital collateral regional counsel shall file
163 motions seeking compensation for representation and reimbursement
164 for expenses pursuant to 18 U.S.C. s. 3006A when providing
165 representation to indigent persons in the federal courts, and
166 shall deposit all such payments received into the General Revenue
167 Fund.

168 (b) The court having jurisdiction over any nonindigent or
169 indigent-but-able-to-contribute defendant who has been receiving
170 the services of the capital collateral regional counsel may
171 assess attorney's fees and costs against the defendant at any
172 stage in the proceedings as the court may deem appropriate. The
173 determination of indigence of any defendant shall be made
174 pursuant to s. 27.52. Liability for the costs of such

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175 representation may be imposed in the form of a lien against the
176 property of the nonindigent or indigent-but-able-to-contribute
177 defendant, which lien shall be enforceable as provided in s.
178 27.561 or s. 938.29.

179 (4) (a) The capital collateral regional counsel or private
180 counsel shall give written notification of each pleading filed by
181 that office and the name of the person filing the pleading to the
182 Commission on Capital Cases and to the trial court assigned to
183 the case.

184 (b) Each capital collateral regional counsel ~~and each~~
185 ~~attorney participating in the pilot program in the northern~~
186 ~~region pursuant to s. 27.701(2)~~ shall provide a quarterly report
187 ~~to the President of the Senate, the Speaker of the House of~~
188 ~~Representatives,~~ and the Commission on Capital Cases which
189 details the number of hours worked by investigators and legal
190 counsel per case and the amounts per case expended during the
191 preceding quarter in investigating and litigating capital
192 collateral cases.

193 Section 4. Section 27.709, Florida Statutes, is amended to
194 read:

195 27.709 Commission on Capital Cases.--

196 (1) (a) There is created the Commission on Capital Cases,
197 which shall consist of the seven ~~six~~ following members:

- 198 1. Three ~~Two~~ members appointed by the Governor.
- 199 2. Two members appointed by the President of the Senate
200 ~~from the membership of the Senate. One member shall be a member~~
201 ~~of the majority party, and one member shall be a member of the~~
202 ~~minority party.~~
- 203 3. Two members appointed by the Speaker of the House of

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204 Representatives ~~from the membership of the House of~~
205 ~~Representatives. One member shall be a member of the majority~~
206 ~~party, and one member shall be a member of the minority party.~~

207 (b) The chair of the commission shall be selected by the
208 members for a term of 1 year.

209 (c) The commission shall meet quarterly, and other meetings
210 may be called by the chair upon giving at least 7 days' notice to
211 all members and the public.

212 (d) Members of the commission are entitled to per diem and
213 travel expenses to be paid by the appointing entity.

214 (e) Members of the commission shall be appointed to serve
215 terms of 4 years each, except that a member's term shall expire
216 upon leaving his or her position in office ~~as a member of the~~
217 Senate or the House of Representatives.

218 (f) The Justice Administrative Commission ~~Office of~~
219 ~~Legislative Services~~ shall provide staff support for the
220 commission, which shall be housed therein for administrative
221 purposes.

222 (2) (a) The commission shall review the administration of
223 justice in capital collateral cases, receive relevant public
224 input, review the operation of the capital collateral regional
225 counsel and private counsel appointed pursuant to ss. 27.710 and
226 27.711, and advise and make recommendations to the Governor,
227 Legislature, and Supreme Court.

228 (b) As part of its duties, the commission shall compile and
229 analyze case-tracking reports produced by the Supreme Court. In
230 analyzing these reports, the commission shall develop statistics
231 to identify trends and changes in case management and case
232 processing, identify and evaluate unproductive points of delay,

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233 and generally evaluate the way cases are progressing. The
234 commission shall report these findings to the Legislature by
235 January 1 of each year.

236 (c) ~~In addition,~~ The commission shall receive complaints
237 regarding the practice of any office of regional counsel and
238 private counsel appointed under ~~pursuant to~~ ss. 27.710 and 27.711
239 and may investigate and shall refer any complaint to The Florida
240 Bar, the State Supreme Court, the Department of Law Enforcement,
241 the Chief Inspector General, or the Commission on Ethics, as
242 appropriate.

243 (d) The commission may sponsor programs of continuing legal
244 education which are devoted specifically to capital cases and
245 shall undertake any project recommended or approved by the
246 commission members.

247 (e) The commission may request each state attorney, circuit
248 court judge, and the Office of the Attorney General to submit
249 pertinent reports to the commission for its review.

250 (f) The commission may exercise subpoena powers and may
251 receive sworn testimony it deems necessary for the administration
252 of justice in capital cases.

253 (g) The commission shall appoint the capital collateral
254 regional counsel by a majority vote, and may terminate the
255 employment of regional counsel, by a super majority vote, at any
256 time prior to the expiration of the appointment.

257 Section 5. Section 27.710, Florida Statutes, is amended to
258 read:

259 27.710 Registry of attorneys applying to represent persons
260 in postconviction capital collateral proceedings; certification
261 of minimum requirements; appointment by trial court.--

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262 (1) The executive director of the Commission on Capital
263 Cases shall compile and maintain a statewide registry of
264 attorneys in private practice who have certified that they meet
265 the ~~minimum~~ requirements of this section and s. 27.704(2), who
266 are available for appointment by the court under this section to
267 represent persons convicted and sentenced to death in this state
268 in postconviction collateral proceedings, ~~and who have attended~~
269 ~~within the last year a continuing legal education program of at~~
270 ~~least 10 hours' duration devoted specifically to the defense of~~
271 ~~capital cases, if available. Continuing legal education programs~~
272 ~~meeting the requirements of this rule offered by The Florida Bar~~
273 ~~or another recognized provider and approved for continuing legal~~
274 ~~education credit by The Florida Bar shall satisfy this~~
275 ~~requirement. The failure to comply with this requirement may be~~
276 ~~cause for removal from the list until the requirement is~~
277 ~~fulfilled.~~ To ensure that sufficient attorneys are available for
278 appointment by the court, when the number of attorneys on the
279 registry falls below 50, the executive director shall notify the
280 chief judge of each circuit by letter and request the chief judge
281 to promptly submit the names of at least three private attorneys
282 who regularly practice criminal law in that circuit and who
283 appear to meet the minimum requirements to represent persons in
284 postconviction capital collateral proceedings. The executive
285 director shall send an application to each attorney identified by
286 the chief judge so that the attorney may register for appointment
287 as counsel in postconviction capital collateral proceedings. As
288 necessary, the executive director may also advertise in legal
289 publications and other appropriate media for qualified attorneys
290 interested in registering for appointment as counsel in

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291 | postconviction capital collateral proceedings. Under limited
292 | circumstances, when the number of qualified lawyers on the
293 | registry fall below 50, and upon the application of an attorney
294 | who does not meet the minimum qualifications set forth in this
295 | section, the application may be forwarded by the executive
296 | director to the full commission for its approval of the applicant
297 | being included on the list of available registry attorneys. By
298 | ~~Not later than~~ September 1 of each year, and as necessary
299 | thereafter, the executive director shall provide to the Chief
300 | Justice of the Supreme Court, the chief judge and state attorney
301 | in each judicial circuit, and the Attorney General a current copy
302 | of its registry of attorneys who are available for appointment as
303 | counsel in postconviction capital collateral proceedings. The
304 | registry must be indexed by judicial circuit and must contain the
305 | requisite information submitted by the applicants in accordance
306 | with this section.

307 | (2) (a) To be eligible for court appointment as counsel in
308 | postconviction capital collateral proceedings, an attorney must
309 | certify on an application provided by the executive director that
310 | he or she is a member in good standing of the Florida Bar and:

311 | 1. Is an active practicing attorney who has at least 5
312 | years' experience in the practice of criminal law and has
313 | demonstrated the proficiency necessary to represent defendants in
314 | capital cases, including proficiency in the production and
315 | admission of evidence, including psychiatric and forensic
316 | evidence, the use of expert witnesses, and the investigation and
317 | presentation of mitigation evidence;

318 | 2. Has attended and completed a minimum of 12 hours of
319 | continuing legal education programs within the previous 2 years

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320 which were devoted to the defense of capital cases and offered by
321 the Florida Bar, the Commission on Capital Cases, or another
322 authorized provider of continuing legal education courses; and
323 3.a. Has tried at least nine state or federal jury trials
324 to completion, two of which must have been capital cases, and:
325 (I) Three of which must have been murder trials;
326 (II) One of which must have been a murder trial and five of
327 which must have been other felony trials; or
328 (III) One of which must have included a postconviction
329 evidentiary hearing and five of which must have been other felony
330 trials;
331 b. Has appealed one capital conviction and appealed:
332 (I) At least three felony convictions, one of which must
333 have been a murder conviction;
334 (II) At least three felony convictions and participated in
335 one capital postconviction evidentiary hearing; or
336 (III) At least six felony convictions, two of which must
337 have been murder convictions; or
338 c. Has litigated as a first chair attorney at least three
339 capital collateral evidentiary hearings.
340 (b) If the trial court finds that exceptional circumstances
341 exist requiring appointment of an attorney who does not meet the
342 criteria set forth in paragraph (a), the trial court shall enter
343 a written order specifying the circumstances and making explicit
344 findings that the attorney appointed is capable of providing
345 competent representation in accordance with the intent of this
346 section.

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347 (c) Failure by an attorney to comply with any criteria set
348 forth in paragraph (a) may be cause to remove the attorney from
349 the registry until such criteria is satisfied.

350 (d) Compliance may be proven by submitting written
351 certification of compliance to the commission, and may be
352 submitted by electronic mail ~~satisfies the minimum requirements~~
353 ~~for private counsel set forth in s. 27.704(2).~~

354 (3) An attorney ~~who applies for registration and court~~
355 ~~appointment as counsel in postconviction capital collateral~~
356 ~~proceedings must certify that he or she is counsel of record in~~
357 ~~not more than four such proceedings and, if appointed to~~
358 represent a person in postconviction capital collateral
359 proceedings, shall continue the ~~such~~ representation under the
360 terms and conditions set forth in s. 27.711 until the sentence is
361 reversed, reduced, or carried out or unless permitted to withdraw
362 from representation by the trial court. The court may not permit
363 an attorney to withdraw from representation without a finding of
364 sufficient good cause. The court may impose appropriate sanctions
365 if it finds that an attorney has shown bad faith with respect to
366 continuing to represent a defendant in a postconviction capital
367 collateral proceeding. This section does not preclude the court
368 from reassigning a case to a capital collateral regional counsel
369 following discontinuation of representation if a conflict of
370 interest no longer exists with respect to the case.

371 (4) (a) Each private attorney who is appointed by the court
372 to represent a capital defendant, including court-appointed
373 attorneys who elect to proceed pro bono, must enter into a
374 contract with the Chief Financial Officer. If the ~~appointed~~
375 attorney fails to execute the contract within 30 days after the

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376 | date the contract is mailed to the attorney, the executive
377 | director of the Commission on Capital Cases shall notify the
378 | trial court and remove the attorney from the registry. The Chief
379 | Financial Officer shall develop the form of the contract for
380 | court-appointed attorneys, function as contract manager, and
381 | enforce performance of the terms and conditions of the contract
382 | consistent with the requirements of this chapter. By signing such
383 | contract, the attorney certifies that he or she intends to
384 | continue the representation under the terms and conditions set
385 | forth in the contract until the sentence is reversed, reduced, or
386 | carried out or until released by order of the trial court. A
387 | court-appointed attorney may not receive state funds unless he or
388 | she has executed the contract required under this paragraph.

389 | (b) Each attorney appointed under this section must submit
390 | a report each quarter to the commission, in the format designated
391 | by the commission. If the report is not submitted within 60 days
392 | after the end of the quarter, the executive director shall remove
393 | the attorney from the registry and the court may impose a fine
394 | for noncompliance. The court may also remove the attorney from
395 | the case or cases to which he or she has been appointed under
396 | this section.

397 | (c) An attorney removed from the registry may, at the
398 | discretion of the court, continue to represent any clients that
399 | the attorney has been appointed to represent as of the date of
400 | removal. If the court allows an attorney who has been removed
401 | from the registry to continue to represent appointed capital
402 | defendants, the court must take all necessary actions to ensure
403 | compliance with the requirements of this subsection. An attorney
404 | who has been removed from the registry may not accept further

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405 appointments to represent any new capital defendant unless the
406 attorney is placed back on the registry as provided in paragraph
407 (d).

408 (d) After certifying to the executive director that he or
409 she will act in accordance with the provisions of this
410 subsection, an attorney removed from the registry may, after 60
411 days, reapply for the registry as provided in subsection (2). An
412 attorney may reapply for the registry no more than two times
413 under this paragraph for failure to adhere to the requirements of
414 this subsection.

415 (5) (a) Upon the motion of the capital collateral regional
416 counsel to withdraw under ~~pursuant to~~ s. 924.056(1) (a); or

417 (b) Upon notification by the state attorney or the Attorney
418 General that:

419 1. Thirty days have elapsed since appointment of the
420 capital collateral regional counsel and no entry of appearance
421 has been filed under ~~pursuant to~~ s. 924.056; or

422 2. A person under sentence of death who was previously
423 represented by private counsel is currently unrepresented in a
424 postconviction capital collateral proceeding,

425
426 the executive director shall immediately notify the trial court
427 that imposed the sentence of death that the court must
428 immediately appoint an attorney, selected from the current
429 registry, to represent such person in collateral actions
430 challenging the legality of the judgment and sentence in the
431 appropriate state and federal courts. If the attorney appointed
432 to represent a defendant under a sentence of death does not wish
433 to continue representing the defendant in federal proceedings,

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434 the attorney must make a good faith effort to assist the
435 defendant in finding an attorney who meets the criteria and is
436 willing to represent the defendant in federal proceedings. The
437 court may ~~shall have the authority to~~ strike a notice of
438 appearance filed by a Capital Collateral Regional Counsel, if the
439 court finds the notice was not filed in good faith and may so
440 notify the executive director that the client is no longer
441 represented by the Office of Capital Collateral Regional Counsel.
442 In making an assignment, the court shall give priority to
443 attorneys whose experience and abilities in criminal law,
444 especially in capital proceedings, are known by the court to be
445 commensurate with the responsibility of representing a person
446 sentenced to death. The trial court must issue an order of
447 appointment which contains specific findings that the appointed
448 counsel meets the statutory requirements and has the high ethical
449 standards necessary to represent a person sentenced to death.

450 (6) More than one attorney may not be appointed and
451 compensated at any one time under s. 27.711 to represent a person
452 in postconviction capital collateral proceedings. However, an
453 attorney appointed under this section may designate another
454 attorney to assist him or her if the designated attorney meets
455 the qualifications of this section.

456 Section 6. Section 27.711, Florida Statutes, is amended to
457 read:

458 27.711 Terms and conditions of appointment of attorneys as
459 counsel in postconviction capital collateral proceedings.--

460 (1) As used in s. 27.710 and this section, the term:

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461 (a) "Capital defendant" means the person who is represented
462 in postconviction capital collateral proceedings by an attorney
463 appointed under s. 27.710.

464 (b) "Executive director" means the executive director of
465 the Commission on Capital Cases.

466 (c) "Postconviction capital collateral proceedings" means
467 one series of collateral litigation of an affirmed conviction and
468 sentence of death, including the proceedings in the trial court
469 that imposed the capital sentence, any appellate review of the
470 sentence by the Supreme Court, any certiorari review of the
471 sentence by the United States Supreme Court, and any authorized
472 federal habeas corpus litigation with respect to the sentence.
473 The term does not include repetitive or successive collateral
474 challenges to a conviction and sentence of death which is
475 affirmed by the Supreme Court and undisturbed by any collateral
476 litigation.

477 (2) After appointment by the trial court under s. 27.710,
478 the attorney must immediately file a notice of appearance with
479 the trial court indicating acceptance of the appointment to
480 represent the capital defendant throughout all postconviction
481 capital collateral proceedings, including federal habeas corpus
482 proceedings, in accordance with this section or until released by
483 order of the trial court.

484 (3) An attorney appointed to represent a capital defendant
485 is entitled to payment of the fees set forth in this section only
486 upon full performance by the attorney of the duties specified in
487 this section and approval of payment by the trial court, and the
488 submission of a payment request by the attorney, subject to the
489 availability of sufficient funding specifically appropriated for

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490 | this purpose. An attorney may not be compensated under this
491 | section for work performed by the attorney before July 1, 2003,
492 | while employed by the northern regional office of the capital
493 | collateral counsel. The Chief Financial Officer shall notify the
494 | executive director and the court if it appears that sufficient
495 | funding has not been specifically appropriated for this purpose
496 | to pay any fees which may be incurred. The attorney shall
497 | maintain appropriate documentation, including a current and
498 | detailed hourly accounting of time spent representing the capital
499 | defendant. The fee and payment schedule in this section is the
500 | exclusive means of compensating a court-appointed attorney who
501 | represents a capital defendant. When appropriate, a court-
502 | appointed attorney must seek further compensation from the
503 | Federal Government, as provided in 18 U.S.C. s. 3006A or other
504 | federal law, in habeas corpus litigation in the federal courts.
505 | An attorney who is appointed by a court to represent a capital
506 | defendant on a pro bono basis is not entitled to attorney's fees
507 | as provided for in subsection (4). However, after executing a
508 | contract with the Chief Financial Officer, a pro bono attorney is
509 | entitled to payment for investigative services as specified in
510 | subsection (5) and for miscellaneous expenses actually incurred
511 | on behalf of the capital defendant as specified in subsection
512 | (6). If a registry attorney has been appointed to represent a
513 | defendant, a payment may not be made to any other attorney who
514 | volunteers to represent the same defendant on a pro bono basis.

515 | (4) Upon approval by the trial court, an attorney appointed
516 | to represent a capital defendant under s. 27.710 is entitled to
517 | payment of the following fees by the Chief Financial Officer:

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518 (a) Regardless of the stage of postconviction capital
519 collateral proceedings, the attorney is entitled to \$100 per
520 hour, up to a maximum of \$2,500, before ~~after~~ accepting
521 appointment and filing a notice of appearance in order to review
522 the files and status of the case to determine whether to accept
523 an appointment under the payment schedule in this section. If,
524 after reviewing the case files, the attorney determines that
525 payment under this section does not provide adequate compensation
526 for the foreseeable duties associated with the prospective
527 appointment, the attorney must decline the appointment.

528 (b) The attorney is entitled to \$100 per hour, up to a
529 maximum of \$20,000, after timely filing in the trial court the
530 capital defendant's complete original motion for postconviction
531 relief under the Florida Rules of Criminal Procedure. The motion
532 must raise all issues to be addressed by the trial court.
533 However, an attorney is entitled to fees under this paragraph if
534 the court schedules a hearing on a matter that makes the filing
535 of the original motion for postconviction relief unnecessary or
536 if the court otherwise disposes of the case.

537 (c) The attorney is entitled to \$100 per hour, up to a
538 maximum of \$20,000, after the final hearing on ~~trial court issues~~
539 ~~a final order granting or denying~~ the capital defendant's motion
540 for postconviction relief.

541 (d) The attorney is entitled to \$100 per hour, up to a
542 maximum of \$20,000, after timely filing in the Supreme Court the
543 capital defendant's brief or briefs that address the trial
544 court's final order granting or denying the capital defendant's
545 motion for postconviction relief and the state petition for writ
546 of habeas corpus.

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547 (e) The attorney is entitled to \$100 per hour, up to a
548 maximum of \$10,000, after the trial court issues an order
549 following, ~~pursuant to~~ a remand from the Supreme Court, which
550 directs the trial court to hold further proceedings on the
551 capital defendant's motion for postconviction relief.

552 (f) The attorney is entitled to \$100 per hour, up to a
553 maximum of \$4,000, after the appeal of the trial court's denial
554 of the capital defendant's motion for postconviction relief and
555 the capital defendant's state petition for writ of habeas corpus
556 become final in the Supreme Court.

557 (g) At the conclusion of the capital defendant's
558 postconviction capital collateral proceedings in state court, the
559 attorney is entitled to \$100 per hour, up to a maximum of \$2,500,
560 for the preparation of the initial federal pleading after filing
561 ~~a petition for writ of certiorari in the Supreme Court of the~~
562 ~~United States.~~

563 (h) If, at any time, a death warrant is issued, the
564 attorney is entitled to \$100 per hour, up to a maximum of \$5,000.
565 This payment is ~~shall be~~ full compensation for attorney's fees
566 and costs for representing the capital defendant throughout the
567 proceedings before the state courts of Florida.

568
569 The hours billed by a contracting attorney under this subsection
570 may include time devoted to representation of the defendant by
571 another attorney who is qualified under s. 27.710 and who has
572 been designated by the contracting attorney to assist him or her.

573 (5) An attorney who represents a capital defendant may use
574 the services of one or more investigators to assist in
575 representing a capital defendant. Upon approval by the trial

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576 court, the attorney is entitled to payment from the Chief
577 Financial Officer of \$40 per hour, up to a maximum of \$15,000,
578 for the purpose of paying for investigative services.

579 (6) An attorney who represents a capital defendant is
580 entitled to a maximum of \$15,000 for miscellaneous expenses, such
581 as the costs of preparing transcripts, compensating expert
582 witnesses, and copying documents. Upon approval by the trial
583 court, the attorney is entitled to payment by the Chief Financial
584 Officer of up to \$15,000 for miscellaneous expenses, except that,
585 if the trial court finds that extraordinary circumstances exist,
586 the attorney is entitled to payment in excess of \$15,000.

587 (7) A registry ~~An~~ attorney who is ~~actively~~ representing a
588 capital defendant is entitled to a maximum of \$500 per fiscal
589 year for tuition and expenses for continuing legal education that
590 pertains to the representation of capital defendants regardless
591 of the total number of capital defendants the attorney is
592 representing. Upon approval by the trial court, the attorney is
593 entitled to payment by the Chief Financial Officer for expenses
594 for such tuition and continuing legal education.

595 (8) By accepting court appointment under s. 27.710 to
596 represent a capital defendant, the attorney agrees to continue
597 such representation under the terms and conditions set forth in
598 this section until the capital defendant's sentence is reversed,
599 reduced, or carried out, and the attorney is permitted to
600 withdraw from such representation by a court of competent
601 jurisdiction. However, if an attorney is permitted to withdraw or
602 is otherwise removed from representation prior to full
603 performance of the duties specified in this section, the trial
604 court shall approve payment of fees and costs for work performed,

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605 | which may not exceed the amounts specified in this section. An
606 | attorney who withdraws or is removed from representation shall
607 | deliver all files, notes, documents, and research to the
608 | successor attorney within 15 days after notice from the successor
609 | attorney. The successor attorney shall bear the cost of
610 | transmitting the files, notes, documents, and research.

611 | (9) An attorney may not represent more than seven ~~five~~
612 | defendants in capital postconviction litigation at any one time.
613 | The defendant-representation limit includes cases involving
614 | capital postconviction proceedings under contract with the
615 | Capital Collateral Regional Counsel, pro bono cases, registry
616 | cases, and privately retained cases. An attorney may not be
617 | appointed to an additional capital postconviction case until the
618 | attorney's capital postconviction representation total falls
619 | below the seven-case limit. An attorney may not enter into an
620 | employment contract with the offices of the Capital Collateral
621 | Regional Counsel if he or she currently represents more than
622 | seven defendants in capital collateral litigation in the
623 | categories specified in this subsection.

624 | (10) This section does not authorize an attorney who
625 | represents a capital defendant to file repetitive or frivolous
626 | pleadings that are not supported by law or by the facts of the
627 | case. An action taken by an attorney who represents a capital
628 | defendant in postconviction capital collateral proceedings may
629 | not be the basis for a claim of ineffective assistance of
630 | counsel.

631 | (11) An attorney appointed under s. 27.710 to represent a
632 | capital defendant may not represent the capital defendant during
633 | a retrial, a resentencing proceeding, a proceeding commenced

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634 | under chapter 940, a proceeding challenging a conviction or
635 | sentence other than the conviction and sentence of death for
636 | which the appointment was made, or any civil litigation other
637 | than habeas corpus proceedings.

638 | (12) The court shall monitor the performance of assigned
639 | counsel to ensure that the capital defendant is receiving quality
640 | representation. The court shall also receive and evaluate
641 | allegations that are made regarding the performance of assigned
642 | counsel. The Chief Financial Officer, the Department of Legal
643 | Affairs, the executive director, or any interested person may
644 | advise the court of any circumstance that could affect the
645 | quality of representation, including, but not limited to, false
646 | or fraudulent billing, misconduct, failure to meet continuing
647 | legal education requirements, solicitation to receive
648 | compensation from the capital defendant, or failure to file
649 | appropriate motions in a timely manner.

650 | (13) Prior to the filing of a motion for order approving
651 | payment of attorney's fees, costs, or related expenses, the
652 | assigned counsel shall deliver a copy of his intended billing,
653 | together with supporting affidavits and all other necessary
654 | documentation, to the Chief Financial Officer's named contract
655 | manager. The contract manager shall have 10 business days from
656 | receipt to review the billings, affidavit, and documentation for
657 | completeness and compliance with contractual and statutory
658 | requirements. If the contract manager objects to any portion of
659 | the proposed billing, the objection and reasons therefor shall be
660 | communicated to the assigned counsel. The assigned counsel may
661 | thereafter file his or her motion for order approving payment of
662 | attorney's fees, costs, or related expenses together with

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663 supporting affidavits and all other necessary documentation. The
664 motion must specify whether the Chief Financial Officer's
665 contract manager objects to any portion of the billing or the
666 sufficiency of documentation and, if so, the reason therefor. A
667 copy of the motion and attachments shall be served on the Chief
668 Financial Officer's contract manager, who shall have standing to
669 file pleadings and appear before the court to contest any motion
670 for order approving payment. The fact that the Chief Financial
671 Officer's contract manager has not objected to any portion of the
672 billing or to the sufficiency of the documentation is not binding
673 on the court, which retains primary authority and responsibility
674 for determining the reasonableness of all billings for fees,
675 costs, and related expenses, subject to statutory limitations.

676 (14) If a trial court judge proposes to award attorney's
677 fees in excess of those set forth in this section, the judge must
678 include written findings of fact that state in detail the
679 extraordinary nature of the expenditures of the time, energy, and
680 talents of the attorney in the case which are not ordinarily
681 expended in other capital collateral cases, and the basis for the
682 court finding that the case is unusual compared to other capital
683 postconviction cases. ~~Each attorney participating in the pilot~~
684 ~~program in the northern region pursuant to s. 27.701(2), as a~~
685 ~~condition of payment pursuant to this section, shall report on~~
686 ~~the performance measures adopted by the Legislature for the~~
687 ~~capital collateral regional counsel.~~

688 Section 7. For the purpose of incorporating the amendments
689 made by this act to sections 27.710 and 27.711, Florida Statutes,
690 in references thereto, section 27.7002, Florida Statutes, is
691 reenacted to read:

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692 27.7002 Limitation on collateral representation; lawyer
693 disqualification; use of state funds for excess fees not
694 authorized.--

695 (1) This chapter does not create any right on behalf of any
696 person, provided counsel pursuant to any provision of this
697 chapter, to challenge in any form or manner the adequacy of the
698 collateral representation provided.

699 (2) With respect to counsel appointed to represent
700 defendants in collateral proceedings pursuant to ss. 27.710 and
701 27.711, the sole method of assuring adequacy of representation
702 provided shall be in accordance with the provisions of s.
703 27.711(12).

704 (3) No provision of this chapter shall be construed to
705 generate any right on behalf of any attorney appointed pursuant
706 to s. 27.710, or seeking appointment pursuant to s. 27.710, to be
707 compensated above the amounts provided in s. 27.711.

708 (4) No attorney may be appointed, at state expense, to
709 represent any defendant in collateral legal proceedings except as
710 expressly authorized in this chapter.

711 (5) The use of state funds for compensation of counsel
712 appointed pursuant to s. 27.710 above the amounts set forth in s.
713 27.711 is not authorized.

714 (6) The executive director of the Commission on Capital
715 Cases is authorized to permanently remove from the registry of
716 attorneys provided in ss. 27.710 and 27.711 any attorney who
717 seeks compensation for services above the amounts provided in s.
718 27.711.

719 (7) Any attorney who notifies any court, judge, state
720 attorney, the Attorney General, or the executive director of the

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721 Commission on Capital Cases, that he or she cannot provide
722 adequate or proper representation under the terms and conditions
723 set forth in s. 27.711 shall be permanently disqualified from any
724 attorney registry created under this chapter unless good cause
725 arises after a change in circumstances.

726 Section 8. This act shall take effect July 1, 2008.